

AMENDED IN SENATE JUNE 19, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2912

**Introduced by Committee on Judiciary (Kuehl (Chair),
Ackerman (Vice Chair), Aroner, Bates, Bock, Corbett,
House, Jackson, Longville, Robert Pacheco, Shelley,
Steinberg, and Wiggins)**

March 15, 2000

An act to amend Sections 638, 639, 640, 641, 641.2, 643, 644, and 645.1 of, *to add Section 645.2 to*, and to repeal and add Section 642 of, the Code of Civil Procedure, relating to referees.

LEGISLATIVE COUNSEL'S DIGEST

AB 2912, as amended, Committee on Judiciary. Referees.

Existing law provides that a referee may be appointed upon the agreement of the parties, and that when the parties do not consent, the court may, upon application of any party or its own motion, direct a reference under certain circumstances.

This bill would require that all nonconsensual appointments of referees be made by a written order that includes specified information, including a specified finding about the parties' ability to pay the referee's fees, and would prohibit a court from making a nonconsensual reference at a cost to the parties ~~if it cannot make this~~ *the finding is not made*.

The bill would require, in any case when a referee is appointed to hear and determine discovery motions and disputes, a copy of the order appointing the referee to be

forwarded to the office of the presiding judge of the court and would require the Judicial Council to collect information on the use of referees in discovery proceedings and the fees charged to litigants, and to report these findings to the Legislature by January 1, 2003.

Existing law provides, in the case of a consensual general reference, that the decision of the referee or commissioner upon the whole issue must stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon in the same manner as if the action had been tried by the court.

This bill would provide, in the case of all other references, the decision of the referee or commissioner is only advisory, and the court may adopt the referee's recommendations in whole or in part after independently considering the referee's findings *and any objections and responses thereto filed with the court.*

The bill would make other related changes.

The bill would direct the Judicial Council to adopt all rules of court necessary to implement these provisions. The bill would also direct the Judicial Council to collect information regarding the use of these referees and fees paid by the parties for the use of referees. The bill would require the Judicial Council to report to the Legislature regarding this information by January 1, 2003.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 638 of the Code of Civil
2 Procedure is amended to read:
3 638. A referee may be appointed upon the agreement
4 of the parties filed with the clerk, or judge, or entered in
5 the minutes or in the docket, or upon the motion of a
6 party to a written contract or lease that provides that any
7 controversy arising therefrom shall be heard by a
8 ~~referencee~~ *referee* if the court finds a reference
9 agreement exists between the parties:

1 (a) To hear and determine any or all of the issues in an
2 action or proceeding, whether of fact or of law, and to
3 report a statement of decision thereon;

4 (b) To ascertain a fact necessary to enable the court to
5 determine an action or proceeding.

6 *(c) In any matter in which a referee is appointed*
7 *pursuant to this section, a copy of the order shall be*
8 *forwarded to the office of the presiding judge. The*
9 *Judicial Council shall, by rule, collect information on the*
10 *use of these referees. The Judicial Council shall also*
11 *collect information on fees paid by the parties for the use*
12 *of referees to the extent that information regarding those*
13 *fees is reported to the court. The Judicial Council shall*
14 *report thereon to the Legislature by January 1, 2003. This*
15 *subdivision shall become inoperative on January 1, 2004.*

16 SEC. 2. Section 639 of the Code of Civil Procedure is
17 amended to read:

18 639. (a) When the parties do not consent, the court
19 may, upon the written motion of any party, or of its own
20 motion, appoint a referee in the following cases:

21 (1) When the trial of an issue of fact requires the
22 examination of a long account on either side; in which
23 case the referees may be directed to hear and decide the
24 whole issue, or report upon any specific question of fact
25 involved therein.

26 (2) When the taking of an account is necessary for the
27 information of the court before judgment, or for carrying
28 a judgment or order into effect.

29 (3) When a question of fact, other than upon the
30 pleadings, arises upon motion or otherwise, in any stage
31 of the action.

32 (4) When it is necessary for the information of the
33 court in a special proceeding.

34 (5) When the court in any pending action determines
35 ~~in its discretion~~ that it is necessary for the court to appoint
36 a referee to hear and determine any and all discovery
37 motions and disputes relevant to discovery in the action
38 and to report findings and make a recommendation
39 thereon.

1 (b) All appointments of referees pursuant to this
2 section shall be by written order and shall include the
3 following:

4 (1) When the referee is appointed pursuant to
5 paragraph (1), (2), (3), or (4) of subdivision (a), a
6 statement of the reason the referee is being appointed.

7 (2) When the referee is appointed pursuant to
8 paragraph (5) of subdivision (a), the exceptional
9 circumstances requiring the reference, which must be
10 specific to the circumstances of the particular case.

11 (3) The subject matter or matters included in the
12 reference.

13 (4) The name, business address, and telephone
14 number of the referee.

15 (5) The maximum hourly rate the referee may charge
16 and, at the request of any party, the maximum number
17 of hours for which the referee may charge. Upon the
18 written application of any party or the referee, the court
19 may, for good cause shown, modify the maximum
20 number of hours subject to any findings as set forth in
21 paragraph (6).

22 (6) (A) Either a finding that no party has established
23 an economic inability to pay a pro rata share of the
24 referee's fee or a finding that one or more parties has
25 established an economic inability to pay a pro rata share
26 of the referee's fees and that another party has agreed
27 voluntarily to pay that additional share of the referee's
28 fee. A court shall not appoint a referee at a cost to the
29 parties if neither of these findings ~~can be made. In~~
30 ~~determining whether a party has established an inability~~
31 ~~to pay the referee's fees, the court shall consider only the~~
32 ~~ability of the party, not the party's counsel, to pay these~~
33 ~~fees. is made.~~

34 (B) *In determining whether a party has established an*
35 *inability to pay the referee's fees under subparagraph*
36 *(A), the court shall consider only the ability of the party,*
37 *not the party's counsel, to pay these fees. If a party is*
38 *proceeding in forma pauperis, the party shall be deemed*
39 *by the court to have an economic inability to pay the*
40 *referee's fees. However, a determination of economic*

1 *inability to pay the fees shall not be limited to parties that*
2 *proceed in forma pauperis. For those parties who are not*
3 *proceeding in forma pauperis, the court, in determining*
4 *whether a party has established an inability to pay the*
5 *fees, shall consider, among other things, the estimated*
6 *cost of the referral and the impact of the proposed fees on*
7 *the party's ability to proceed with the litigation.*

8 (c) In any matter in which a referee is appointed
9 pursuant to paragraph (5) of subdivision (a), a copy of the
10 order appointing the referee shall be forwarded to the
11 office of the presiding judge of the court. The Judicial
12 Council shall, by rule, collect information on the use of
13 these references and the reference fees charged to
14 litigants, and shall report thereon to the Legislature by
15 January 1, 2003. This subdivision shall become inoperative
16 on January 1, 2004.

17 SEC. 3. Section 640 of the Code of Civil Procedure is
18 amended to read:

19 640. (a) The court shall appoint as referee or referees
20 the person or persons, not exceeding three, agreed upon
21 by the parties.

22 (b) If the parties do not agree on the selection of the
23 referee or referees, each party shall submit to the court
24 up to three nominees for appointment as referee and the
25 court shall appoint one or more referees, not exceeding
26 three, from among the nominees. If no nominations are
27 received from any of the parties, the court shall appoint
28 one or more referees, not exceeding three, against whom
29 there is no legal objection, or the court may appoint a
30 court commissioner of the county where the cause is
31 pending as a referee.

32 (c) Participation in the referee selection procedure
33 pursuant to this section does not constitute a waiver of
34 grounds for objection to the appointment of a referee
35 under Section 641 or 641.2.

36 SEC. 4. Section 641 of the Code of Civil Procedure is
37 amended to read:

38 641. A party may object to the appointment of any
39 person as referee, on one or more of the following
40 grounds:

1 (a) A want of any of the qualifications prescribed by
2 statute to render a person competent as a juror, except a
3 requirement of residence within a particular county in
4 the state.

5 (b) Consanguinity or affinity, within the third degree,
6 to either party, or to an officer of a corporation which is
7 a party, or to any judge of the court in which the
8 appointment shall be made.

9 (c) Standing in the relation of guardian and ward,
10 conservator and conservatee, master and servant,
11 employer and clerk, or principal and agent, to either
12 party; or being a member of the family of either party; or
13 a partner in business with either party; or security on any
14 bond or obligation for either party.

15 (d) Having served as a juror or been a witness on any
16 trial between the same parties.

17 (e) Interest on the part of ~~such~~ *the* person in the event
18 of the action, or in the main question involved in the
19 action.

20 (f) Having formed or expressed an unqualified
21 opinion or belief as to the merits of the action.

22 (g) The existence of a state of mind in the potential
23 referee evincing enmity against or bias toward either
24 party.

25 SEC. 5. Section 641.2 of the Code of Civil Procedure
26 is amended to read:

27 641.2. In any action brought under Article 8
28 (commencing with Section 12600) of Chapter 6, Part 2,
29 Division 3, Title 3 of the Government Code, a party may
30 object to the appointment of any person as referee on the
31 ground that the person is not technically qualified with
32 respect to the particular subject matter of the
33 proceeding.

34 SEC. 6. Section 642 of the Code of Civil Procedure is
35 repealed.

36 SEC. 7. Section 642 is added to the Code of Civil
37 Procedure, to read:

38 642. Objections, if any, to a reference or to the referee
39 or referees appointed by the court shall be made in

1 writing, and must be heard and disposed of by the court,
2 not by the referee.

3 SEC. 8. Section 643 of the Code of Civil Procedure is
4 amended to read:

5 643. (a) Unless otherwise directed by the court, the
6 referees or commissioner must report their statement of
7 decision in writing to the court within 20 days after the
8 hearing, if any, has been concluded and the matter has
9 been submitted.

10 (b) A referee appointed pursuant to Section 638 shall
11 report as agreed by the parties and approved by the
12 court.

13 (c) A referee appointed pursuant to Section 639 shall
14 ~~submit~~ *file with the court* a report that includes a
15 recommendation on the merits of any disputed issue, a
16 statement of the total hours spent and the total fees
17 charged by the referee, and the referee's recommended
18 allocation of payment. ~~Within~~ *The referee shall serve the*
19 *report on all parties by first-class mail. Any party may file*
20 *an objection to the referee's report or recommendations*
21 *within 10 days after the referee serves and files the report,*
22 *or within another time as the court may direct, any party*
23 ~~may serve and file objections to the report or~~
24 ~~recommendations. The.~~ *The objection shall be served by*
25 *first-class mail on the referee and all other parties.*
26 *Responses to the objections shall be filed with the court*
27 *and served on the referee and all other parties by*
28 *first-class mail within 10 days after the objection is served.*
29 *The court shall review any objections to the report and*
30 *any response responses submitted to those objections and*
31 *shall thereafter enter appropriate orders. Nothing in this*
32 *section is intended to deprive the court of its power to*
33 *change the terms of the referee's appointment or to*
34 *modify or disregard the referee's recommendations, and*
35 *this overriding power may be exercised at any time,*
36 *either on the motion of any party for good cause shown*
37 *or on the court's own motion.*

38 SEC. 9. Section 644 of the Code of Civil Procedure is
39 amended to read:

1 644. (a) In the case of a consensual general reference
2 pursuant to Section 638, the decision of the referee or
3 commissioner upon the whole issue must stand as the
4 decision of the court, and upon filing of the statement of
5 decision with the clerk of the court, or with the judge
6 where there is no clerk, judgment may be entered
7 thereon in the same manner as if the action had been
8 tried by the court.

9 (b) In the case of all other references, the decision of
10 the referee or commissioner is only advisory. The court
11 may adopt the referee's recommendations in whole or in
12 part after independently considering the referee's
13 findings *and any objections and responses thereto filed*
14 *with the court.*

15 SEC. 10. Section 645.1 of the Code of Civil Procedure
16 is amended to read:

17 645.1. (a) When a referee is appointed pursuant to
18 Section 638, the referee's fees shall be paid as agreed by
19 the parties. If the parties do not agree, the court may
20 order the parties to pay the referee's fees as set forth in
21 subdivision (b).

22 (b) When a referee is appointed pursuant to Section
23 639, at any time after a determination of ability to pay is
24 made as specified in paragraph (6) of subdivision ~~(f)~~ (b)
25 of Section 639, the court may order the parties to pay the
26 fees of referees who are not employees or officers of the
27 court at the time of appointment, as fixed pursuant to
28 Section 1023, in any manner determined by the court to
29 be fair and reasonable, including an apportionment of the
30 fees among the parties. For purposes of this section, the
31 term "parties" does not include parties' counsel.

32 SEC. 11. Section 645.2 is added to the Code of Civil
33 Procedure, to read:

34 645.2. *The Judicial Council shall adopt all rules of*
35 *court necessary to implement this chapter.*